IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 749 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMJIBHAI KHODABHAI PARMAR

Versus

DIRECTOR BECON ELECTRONICS PVT. LTD

Appearance:

1. First Appeal No. 749 of 2004

MR KISHOR M PAUL for Petitioner No. 1

PS GOGIA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 04/05/2004

ORAL JUDGEMENT

1. The appellant (original claimant), by filing this

appeal under Section 173 of the Motor Vehicles Act, 1988 ('Act' for short), has challenged the order dated December 16, 2002, passed by the 2nd Fast Track Court, Motor Accident Claims Tribunal (Aux.), Rajkot, rejecting application Exh.7 filed by the claimant under Section 140 of the Act in MACP No.2374 of 2000.

2. On May 30, 2002, the appellant had met with a vehicular accident in which he had sustained head injury, CLW on scalp and multiple abrasions all over body. The appellant had filed MACP No.2374 of 2000 before the Motor Accident Claims Tribunal, Rajkot, claiming compensation of Rs.2 lakhs against the owner of the vehicle No. GJ-3-D-9126 and the New India Assurance Company Limited with which the said vehicle was insured.

3. Pending the claim petition, the appellant has filed application Exh.7 claiming interim compensation on the basis of 'no fault liability' as provided under Section 140 of the Act. Along with the application, the applicant has produced injury certificate and disability certificate issued by Dr. Hemang Vasavada, Consultant Neuro & Trauma Surgeon, Rajkot, which indicated that the injuries sustained by the appellant in the vehicular accident have been resulted into permanent disablement at 15% body as a whole. The Tribunal has rejected the said application Exh.7 on the ground that the injuries sustained by the appellant had not resulted into permanent disablement, which has given rise to filing of this appeal by the original claimant.

4. Heard the learned advocates for the parties. The respondent No.2-Insurance Company is already served with the notice of appeal, but, none appears for the respondent No.2-Insurance Company.

5. It be noted that involvement of the vehicle and the fact that the said vehicle was insured with the respondent No.2-Insurance Company was not disputed before the Tribunal.

6. At the time of deciding the application filed by the claimant under Section 140 of the Act, the Tribunal is only required to see whether the claimant had sustained injuries in a vehicular accident which had resulted into permanent disability. Prima facie, the disability certificate issued by Dr. Hemang Vasavada had proved that the injury sustained by the appellant on his head had resulted into permanent disablement as defined under Section 140 of the Act. In my view, the ingredients of Section 140 of the Act are satisfied

having regard to the evidence produced by the appellant-claimant and, therefore, the application Exh.7 filed by the claimant in MACP No. 2374 of 2000 deserves to be allowed. The respondents are directed to deposit with the Tribunal the amount of Rs.25,000/- under 'no fault liability' along with interest at the rate of 9% from the date of the application till the date of deposit and costs of the application within eight weeks from today.

7. The original claimant shall, however, file an undertaking before the Tribunal within four weeks from today to the effect that the main claim petition shall not be abandoned, shall not be withdrawn, and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall obtain a decision on merits in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition.

8. On the said undertaking being filed, 30% of the amount awarded shall be permitted to be withdrawn by the claimant without security. The remaining 70% of the amount shall be invested in a Cumulative Fixed Deposit in any nationalized Bank in the name of the Registrar of the Tribunal for a period of five years. The deposit shall be renewed from time to time till the main petition is disposed of.

9. Subject to the observations and directions hereinabove, the appeal is allowed. There shall be no order as to costs.

(M.H. Kadri, J.)

(swamy)